



APPENDIX.

CALIFORNIA CIVIL CODE, Sections 3439 and 3442:

§3439. TRANSFERS, ETC., WITH INTENT TO DEFRAUD CREDITORS. Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all creditors of the debtor, and their successors in interest, and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor. [Enacted 1872.]

§3442. INTENT AS QUESTION OF FACT. In all cases arising under section twenty hundred and twenty-seven, or under the provisions of this title, except as otherwise provided in section thirty-four hundred and forty, the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration; provided, however, that any transfer or encumbrance of property made or given voluntarily, or without a valuable consideration, by a party while insolvent or in contemplation of insolvency, shall be fraudulent, and void as to existing creditors. [Enacted 1872; Amended by Stats. 1895, p. 154.]

CALIFORNIA INSURANCE CODE OF 1935, Sections 1011, 1012, 1013, 1014, 1015, 1016, 1025, 1035, 1037, 1043:

§1011. Upon the filing, by the commissioner, with the superior court in the county in which is located the principal office of such person in this State, of a verified application showing any of the following conditions to exist:

(a) That such person has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the commissioner or his deputy or examiner.

(b) That such person has neglected or refused to observe an order of the commissioner to make good within the time prescribed by law any deficiency in its capital if it is a stock corporation, or in its reserve if it is a mutual insurer.

(c) That such person, without first obtaining the consent in writing of the commissioner, has transferred, or attempted to transfer, substantially its entire property or business or, without such consent, has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(d) That such person is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policy holders, or creditors, or to the public.

(e) That such person has violated its charter or any law of the State.

(f) That a certificate of authority of such person has been revoked under section 10711.

(g) That any officer of such person refuses to be examined under oath, touching its affairs.

(h) That any officer or attorney-in-fact of such person has embezzled, sequestered, or wrongfully diverted any of the assets of such person.

(i) That a domestic insurer does not comply with the requirements for the issuance to it of a certificate of authority, or that its certificate of authority has been revoked;

Or, upon the filing, by the commissioner, of a verified application accompanied by a certified copy of the commissioner's last report of examination of any person to whom the provisions of this article apply showing such person to be insolvent within the meaning of Article 13, Chapter 1, Part 2, Division 1 of this code, said court shall issue its order vesting title to all of the assets of said person, wheresoever situated, in the commissioner or his successors in office, in his official capacity as such, and directing the commissioner forthwith to take possession of all of its books, records, property, real and personal, and assets, and to conduct, as conservator, the business of said person, or so much thereof as to the commissioner may seem appropriate, and enjoining said person and its officers, directors, agents, servants and employees from the transaction of its business or disposition of its property until a further order of said court.

§1012. Said order shall continue in force and effect until, on the application either of the commissioner or of such person, it shall, after a full hearing, appear to said court that the ground for said order directing the commissioner to take title and possession does not exist or has been removed and that said person can properly resume title and possession of its property and the conduct of its business.

§1013. Whenever it appears to the commissioner that any of the conditions set forth in section 1011 exist or that irreparable loss and injury to the property and business of a person specified in section 1010 has occurred or may occur unless the commissioner so act immediately, the commissioner, without notice and before applying to the court for any order, forthwith shall take possession

of the property, business, books, records and accounts of such person, and of the offices and premises occupied by it for the transaction of its business, and retain possession subject to the order of the court. Any person having possession of and refusing to deliver any of the books, records or assets of a person against whom a seizure order has been issued by the commissioner, shall be guilty of a misdemeanor and punishable by fine not exceeding one thousand dollars or imprisonment not exceeding one year, or both such fine and imprisonment.

§1014. Whenever the commissioner makes any seizure as provided in section 1013, it shall, on the demand of the commissioner, be the duty of the sheriff of any county of this State, and of the police department of any municipal corporation therein, to furnish him with such deputies, patrolmen or officers as may be necessary to assist the commissioner in making and enforcing any such seizure.

§1015. Immediately after such seizure, the commissioner shall institute a proceeding as provided for in section 1011 and thereafter shall proceed in accordance with the provisions of this article.

§1016. If at any time after the issuance of an order under section 1011 it shall appear to the commissioner that further efforts to proceed under said section would be futile, he may apply to the court for an order to liquidate and wind up the business of said person. Upon a full hearing of such application, the court may make an order directing the winding up and liquidation of the business of such person by the commissioner, as liquidator. The title to all property and assets of such person, vested in the commissioner under section 1011, shall remain in the commissioner, as liquidator, for the purpose of car-

rying out the order to liquidate and wind up the business of such person.

§1025. Claims founded upon unliquidated or undetermined demands must be filed within the time limit provided in this article for the filing of claims, but claims founded upon such demands shall not share in any distribution to creditors of a person proceeded against under section 1016 until such claims have been definitely determined, proved and allowed. Thereafter, such claims shall share ratably with other claims of the same class in all subsequent distributions.)

An unliquidated or undetermined claim or demand within the meaning of this article shall be deemed to be any such claim or demand upon which a right of action has accrued at the date of the order of liquidation or accrues within the time limit provided in this article for the filing of claims, and upon which the liability has not been determined or the amount thereof liquidated; provided, however, that claims founded upon judicial surety bonds and undertakings securing unmatured obligations shall be deemed to be unliquidated and undetermined demands within the meaning of this section.

§1035. In any proceeding under this article, the commissioner shall have the power to appoint and employ under his hand and official seal, special deputy commissioners, as his agents, and to employ such clerks and assistants and to give to each of them such power as may by him be deemed necessary. The compensation of special deputy commissioners, clerks and assistants appointed to carry out the provisions of this article, and all expenses of taking possession of, conserving, conducting, liquidating, disposing of or otherwise dealing with the business

and property of such person under this article, shall be fixed by the commissioner, subject to the approval of the court, and shall be paid out of the assets of such person.

§1037. Upon taking possession of the property and business of any person in any proceeding under this article, the commissioner, exclusively and except as otherwise expressly provided by this article, either as conservator or liquidator:

(d) Shall have authority without notice, to acquire, hypothecate, encumber, lease, improve, sell, transfer or otherwise dispose of or deal with, any real or personal property of any such person at its reasonable market value, or, in cases other than acquisition, sale or transfer on the basis of reasonable market value, upon such terms and conditions as he may deem proper; provided, however, that no transaction involving real or personal property shall be made where the market value of the property involved exceeds the sum of one thousand dollars without first obtaining permission of said court, and then only in accordance with such terms as said court may prescribe.

§1043. In any proceeding under this article, the commissioner, as conservator or as liquidator, may, subject to the approval of said court, and subject to such liens as may be necessary mutualize or reinsure the business of such person, or enter into *rehabilitation agreements*. Such rehabilitation or reinsurance agreements shall provide that, subsequent to the date thereof and for such period of time as as the commissioner may determine, no investment or reinvestment of the assets of the person rehabilitated or reinsured shall be made without first obtaining the written approval of the commissioner.

NEW YORK INSURANCE CODE, Section 52:

§52. REORGANIZATION OF EXISTING CORPORATIONS
AND AMENDMENT OF CERTIFICATES.

1. Any domestic corporation existing or doing business on ~~October first, eighteen hundred and ninety-two~~, may, by a vote of a majority of its directors or trustees, accept the provisions of this chapter and amend its charter to conform with the same, upon obtaining the consent of the superintendent of insurance thereto in writing; and thereafter it shall be deemed to have been incorporated under this chapter, and every such corporation in reincorporating under this provision may for that purpose so adopt in whole or in part a new charter, in conformity herewith, and include therein any or all provisions of its existing charter, and any or all changes from its existing charter, to cover and enjoy any or all the privileges and provisions of existing laws which might be so included and enjoyed if it were originally incorporated thereunder, and it shall, upon such adoption of and after obtaining the consent, as in this section before provided, to such charter, and filing the same and the record of adoption and consent in the office of the superintendent of insurance, perpetually enjoy the same as and be such corporation, which is declared to be a continuation of such corporation which existed prior to such reincorporation; and the offices therein which shall be continued shall be filled by the respective incumbents for the periods for which they were elected, and all others shall be filled in the same manner by such amended charter provided.

2. Every domestic insurance corporation may, upon first obtaining the consent of the superintendent of insurance, by vote of a majority of its directors or trustees,

amend its charter or certificate of incorporation by inserting therein any statement or matter which might have been originally inserted therein; and may also eliminate therefrom unnecessary words or verbiage, or any powers which have never been exercised or are not at the time being exercised, provided that proof of the non-exercise of powers, satisfactory to the superintendent of insurance, shall be filed in the insurance department, and, if any business has been written under the powers proposed to be eliminated, the fact that all liability incident to such powers has been fully terminated shall be shown to the satisfaction of such superintendent through an examination of such corporation or otherwise as he may require; and may likewise amend its charter or certificate of incorporation, by inserting therein or adding thereto any powers which at the time of such amendment, may have been conferred by law upon domestic insurance corporations engaged in a business of the same general character, or which might be included in the certificate of incorporation of a domestic insurance company organized under any general law of this state for a business of the same general character; and the same proceedings shall be taken upon the presentation of such amended charter or certificate adopted in relation to such amendment, to the superintendent of insurance, as are required by this chapter to be taken with respect to an original charter or certificate, except that no examination of the condition and affairs of such corporation shall be required unless so ordered by the superintendent, and if the amended charter

or certificate be approved by the superintendent of insurance, and his certificate of authority to do business thereunder is granted, the corporation shall thereafter be deemed to possess the same powers and be subject to the same liabilities as if such charter or certificates as so amended had been its original charter or certificate of incorporation, but without prejudice to any pending action or proceeding or any rights previously accrued.

3. Upon the reincorporation or upon the amendment of the charter of any life insurance corporation, having a capital stock in accordance with the provisions of this section, it may by a vote of the majority of its directors confer upon its policyholders or upon such policyholders as may have a prescribed amount of insurance upon their lives the right to vote for all or any less number of the directors in such manner not inconsistent with any provision of this chapter as may be authorized by a vote of the stockholders representing at least a majority of the capital stock at a meeting of stockholders called for the purpose. Section thirty-five of the stock corporation law shall not apply to such a corporation.

4. This section shall apply to insurance corporations organized under or subject to article six of this chapter as well as to insurance corporations organized under a special act or any general law or article two of this chapter.

5. No life insurance corporation shall hereafter be permitted to avail itself of the provisions of this section

unless it shall hold for all its outstanding policies or certificates assets equal in value to the minimum reserve required by section eighty-four of this chapter.

6. Whenever any domestic insurance corporation changes the number of its directors or increases or reduces the amount of its capital stock, pursuant to and in conformity with the provisions of the stock corporation law, it may, upon amending its charter in accordance with the provisions of this section, file in the office of the superintendent of insurance a complete copy of its charter, duly authenticated, containing the changes of its capital stock or its directors, or both, as the case may be. Such charter shall not be filed until it has attached thereto the certificate of approval of the attorney-general, as provided in section ten of this chapter.

